

1 Neel Chatterjee (SBN 173985)

2 *nchatterjee@goodwinlaw.com*

3 Luc Dahlin (SBN 305732)

4 *ldahlin@goodwinlaw.com*

5 Daniel Mello (SBN 325714)

6 *dmello@goodwinlaw.com*

7 **GOODWIN PROCTER LLP**

8 601 Marshall Street

9 Redwood City, CA 94063

10 Tel.: +1 650 752 3100

11 Fax.: +1 650 853 1038

12 *Counsel for Plaintiff*

13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA**

15 **OAKLAND DIVISION**

16 HUNGERSTATION LLC,

17 Plaintiff,

18 v.

19 FAST CHOICE LLC d/b/a PACE and
20 INSPIRING TRADING APPS LLC d/b/a
21 SWYFT,

22 Defendants.

Case No. 4:19-CV-5861-HSG

**RESPONSE TO DEFENDANT PACE'S
MOTION TO EXTEND TIME TO
RESPOND TO PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION**

Date: Dec. 11, 2019

Time: 2:00 p.m.

Floor: 4

Ctrm: 2

Judge: Hon. Haywood S. Gilliam, Jr.

Oakland Courthouse

1301 Clay Street

Oakland, CA 94612

1 In view of Defendant Fast Choice LLC d/b/a Pace's ("Pace's") Motion to Extend Time (the
2 "Motion") (Dkt. 31), and the fact that the Court has granted Defendant Inspiring Trading Apps,
3 LLC d/b/a Swyft's ("Swyft's") Administrative Motion to Extend Time (Dkt. 27, 32), the Court
4 should modify Pace's briefing schedule to match Swyft's briefing schedule.

5 This will have the benefit of: (1) preserving the hearing date for HungerStation LLC's
6 ("HungerStation") Preliminary Injunction Motion ("PI Motion"); and (2) harmonizing the various
7 briefing schedules so that Defendants' oppositions are due on the same day and HungerStation's
8 replies are due on the same day (and can potentially be combined into a single brief). To the extent
9 Pace is seeking to delay the Preliminary Injunction briefing and hearing indefinitely, the Court
10 should reject such a request as it would prejudice HungerStation in the form of ongoing irreparable
11 harm that is the subject of the PI Motion.

12 **I. BACKGROUND FACTS**

13 On September 19, 2019, HungerStation filed a Complaint in this matter against both Swyft
14 and Defendant Fast Choice LLC d/b/a Pace ("Pace"). Dkt. No. 1. When HungerStation served the
15 Court-issued Summons and other materials upon Defendant, HungerStation specifically informed
16 Defendants that HungerStation intended to file a preliminary injunction motion. *See* Dkt. Nos. 10,
17 11. The deadline for Defendants to respond to the Complaint was October 21, 2019.

18 On October 15, 2019, six days before the responsive pleadings deadline, Swyft's counsel
19 requested a 30 day extension to respond to the Complaint. Dkt. Nos. 14, 16. As a professional
20 courtesy, in view of the fact that Swyft's counsel had just been retained, HungerStation agreed to
21 the extension. On October 17, 2019, the parties filed a stipulated extension setting Swyft's response
22 to the Complaint on November 20, 2019. Dkt Nos. 14, 16.

23 On November 1, 2019, HungerStation filed its PI Motion. Dkt. No. 23. Following the
24 filing, the Court agreed to set a hearing date for the PI Motion on December 11, 2019. Dkt. No.
25 25. On November 12, 2019, Swyft brought a motion to extend time and on November 14, 2019,
26 the Court granted the Motion and modified the briefing schedule so that Swyft's Opposition is due
27 on November 20, 2019 and HungerStation's reply is due November 27, 2019. Dkt. 27, 32. The
28 hearing date for HungerStation's PI Motion was unaffected.

On November 14, 2019, Pace filed a motion to extend time, apparently seeking to delay its opposition to the PI Motion indefinitely, until the Court can rule on its pending Motion to Dismiss. Dkt. Nos. 31.

II. ARGUMENT

Pace's Motion to indefinitely extend its deadline to oppose HungerStation's PI Motion should be denied because Pace has failed to identify the "substantial harm or prejudice that would occur if the Court did not change the time" as required by L.R. 6-3(a)(3) and because HungerStation would be prejudiced by indefinitely delaying resolution of its PI Motion.

Pace's entire argument appears to be that it should not have to respond to HungerStation's PI Motion while its Motion to Dismiss remains pending. There is no support for this position. Contrary to Swyft's position, plaintiffs routinely file motions for preliminary injunction early in a case and such motions are routinely heard before or together with motions to dismiss. *See, e.g., Engelbrecht v. Fox*, No. EDCV121150VAPDTBX, 2012 WL 13015022, at *1-2 (C.D. Cal. Aug. 8, 2012) (noting that defendant indicated his intent to file a motion to dismiss in his opposition to plaintiff's motion for preliminary injunction).

Pace cannot claim any prejudice here. Pace received notice that a preliminary injunction motion was forthcoming at the moment it was served. *See* Dkt. No. 11 (declaring that HungerStation delivered a letter to Swyft on September 30, 2019, informing Swyft of the forthcoming PI Motion). To the extent that Pace believes there are preliminary jurisdictional questions to address, it may argue so in its opposition to the PI Motion. Further, because the December 11, 2019 hearing date is for both HungerStation's PI Motion and Pace's Motion to Dismiss, Pace cannot argue it would be prejudiced where the Court is set to consider both motions simultaneously.

In an effort to resolve this scheduling dispute, HungerStation proposes that the Court modify Pace's briefing schedule on the PI Motion to match the schedule given to Swyft. Pace's opposition would be due on November 20, 2019, HungerStation's reply (to both Defendants' oppositions) would be due on November 27, 2019, and the hearing date of December 11, 2019 can be maintained as to both HungerStation's PI Motion and Pace's Motion to Dismiss.

1
2 Dated: November 14, 2019.

3 GOODWIN PROCTER LLP

4 /s/ Neel Chatterjee

5 Neel Chatterjee (SBN 173985)

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16 *Counsel for Plaintiff*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on November 14, 2019. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 14th day of November 2019.

/s/ Neel Chatterjee
Neel Chatterjee